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PURPOSE

The purpose of this Association shall be to bring into closer contact by association and communication lawyers, barristers and solicitors who are residents of the United States of America, or any of its possessions, or of the Dominion of Canada, who are actively engaged wholly or in (substantial) part in the practice of that branch of the law pertaining to the business of insurance in any of its branches, and to Insurance Companies; for the purpose of becoming more efficient in that particular branch of the legal profession and to better protect and promote the interests of Insurance Companies authorized to do business in the United States or Dominion of Canada; to encourage cordial intercourse among such lawyers, barristers and solicitors, and between them and Insurance Companies generally.

Address of President Mayne to Mid-Winter Meeting of Officers of the International Association of Insurance Counsel

SINCE our meeting at French Lick, Indiana, on August 24th, 1934, I will briefly outline the activities of your President, and call to your attention certain matters upon which I feel action should be taken by the Executive Committee.

1. Pursuant to the resolution adopted by the Executive Committee, the Treasurer has submitted his bond in the sum of $5,000.00, with the Fidelity and Deposit Company of Maryland, as surety, payable in the event of loss to the President and his successors in office for the use and benefit of the International Association of Insurance Counsel, in accordance with the provisions of the By-Laws, and said bond has been approved by the Finance Committee.

2. The Finance Committee will prepare a budget and submit the same for approval at this meeting. The Finance Committee has designated the Genesee Valley Trust Company as depository for the funds of the Association up to $5,000.00, and the deposits in said account shall not exceed that sum. All funds in excess of the deposit in the Genesee Valley Trust Company shall be deposited in the Rochester Trust and Safe Deposit Company up to the amount of $5,000.00, said deposits to be made in time certificates in denominations of $500.00. If the Association's funds exceed $10,000.00, (viz: in both) then such excess shall be deposited in some other bank which is covered under the Federal Insurance Act.

3. Membership Committees, consisting of three members of our Association in each state and Canada, have been appointed and personal letters were sent to each appointee, calling attention to the provisions of the new By-Laws as to the qualification of applicants to membership in our Association. Emphasis was made that our Association was not seeking quantity of members, but quality. I am pleased to say that the members responded graciously to their appointments and agreed to carry out the provision of the By-Laws as to qualification.

4. Due to the change of the political situation in many states in the November Election, the selection of members for the Legislative Committees for the states was deferred until after November 8th, 1934. Valuable suggestions were made as to the appointments on these committees by members of our Association in various states, which helped my task in selecting the personnel of the Legislative Committees. I am gratified to say that I received responses from all of the appointees gladly accepting the work allotted to them, and only in a few instances a member declined the appointment on account of illness or pressure of other business. I feel confident that the Legislative Committees in all the states and in Canada will co-operate fully, and render every assistance possible when requested by the General Legislative Committee.

5. I submit for your approval appointments of the various standing committees as provided by the By-Laws; the personnel of the General Legislative Committee and the Committee on London Lloyds. (See page 19 of this issue of the Journal.)

In the appointment of the standing committees, I urged the Chairmen and members thereof to prepare a paper on their particular branch of Insurance Law so that the same may be used and published in the Journal.

In am pleased to report that Mr. Harold S. Thomas, of Des Moines, Iowa, a member of the Committee on Casualty Insurance, has agreed to prepare a paper on the subject of "Construction to be Placed on Total House Confinement and Non-House Confinement Clauses in Health Insurance Policies."

Judge L. A. Stebbins, Chairman of the Committee on Life Insurance, has agreed to prepare a paper on the subject of "Taking Poison and Inhaling Gas as an Exception to Double Indemnity Liability."

A paper will also be published, prepared by Mr. Remington Rogers, of Tulsa, Oklahoma, on the subject of "Bogus Claimants and Malingerers."

Each member of the Executive Committee should try to assist the Editor in securing additional papers from members of our Association, as I feel confident that, in order to make

our Journal an outstanding success, it is important that we have interesting and instructive articles appearing in each issue, and by having the papers prepared in advance, it will materially aid the work of our Editor.

RECOMMENDATIONS

6. *Roster of Members.*

(a) A new Roster of members should be published containing a short foreword.

(b) Purposes of the Association and By-Laws.

(c) A list of the officers and members of the Executive Committee.

(d) List of the Standing Committees, General Legislative Committee, Legislative and Membership Committees of each state.

(e) A revised list of the membership by states and a list of the members in alphabetical order. It may appear that by having an alphabetical list of members this is a duplication, but it is my opinion that it will be very helpful to the membership if we have an alphabetical list, as we may know the name of the member but not aware of where the member resides.

(f) A new binder should be prepared eliminating the words "Directory of Insurance Lawyers." As a suggestion, we could designate the binder: "International Association of Insurance Counsel—Its Purposes, Personnel of Officers, Committees, Roster of Members."

(g) A Roster should be forwarded to each member of the Association and to counsel of the Insurance Companies, with an appropriate letter.

7. *Journal.* Mr. George Yancey, Editor of the Journal, is commended on his excellent work. The work involved in editing the Journal is tremendous and all members of the Executive Committee should lend their assistance to him. The Editor has inquired what charge should be made by the Association for subscriptions to the Journal and suggested a subscription price of $4.00 per annum, to which I concurred without taking up the matter with the Executive Committee. I request that our action be ratified and approved. The question of accepting advertising in the Journal should also be discussed at this meeting. I am leaving this matter to you for decision.

8. *Legislation.* Our Association should continue to lend all assistance to the Association of Casualty and Surety Executives, the American Mutual Alliance and other insurance organizations which foster remedial legislation for the benefit of insurance companies and the repeal of laws detrimental to their interest. I have been in close touch with Mr. Drake of the Association of Casualty and Surety Executives and with Mr. Gruhn of the American Mutual Alliance, as well as counsel of other Insurance Companies, assuring them of the Association's full co-operation in any work that they desire us to perform.

The various State Legislative Committees will report to the General Legislative Committee, of which Mr. Drake is Chairman. Mr. Drake is quite familiar with what action should be taken, due to his close contact with this work in all the states. Members of the various State Legislative Committees will not take any action on legislative matters until requested by the Chairman of the General Legislative Committee or the President.

We should continue our work against the practices of London Lloyds and aid any movement in passing Federal or State Legislation prohibiting them from doing business until licensed properly in the states where they transact business.

I submit for your consideration the question of whether our Association should go on record as favoring State Legislation of a Driver's License Law, Inspection of Automobiles and other safety measures, and also a Financial Responsibility Act. In many states this legislation is now being proposed.

Constructive Legislation relating to some phases of the Surety business should be sponsored by our Association for enactment, such as:

(a) Statute providing for fiduciaries to submit for verification the securities as set out in their sworn accounts.

(b) Permitting sureties and administrators to agree upon joint control of fiduciary funds.

(c) Provide for fidelity bonds only on Tax Collectors, eliminating responsibility of duty to collect taxes.

(d) Relieving public officials of liability for loss due to failure of depository.

In the States of Missouri, Illinois, South Carolina and several other states, an effort is being made toward the enactment of new Insurance Codes. I have made a preliminary examination of the draft of the Illinois

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and Missouri proposed Insurance Code. Of course, there are objectionable features proposed, but at the same time some good may be accomplished if enacted, as it will clarify some of the statutory provisions and also eliminate obsolete sections of insurance statutes.

Our Association, through its Legislative Committees, should attend the hearings before the committees of the Legislature in charge of this work and render all possible assistance reporting to the Chairman of the General Legislative Committee, or the President.

Our Association should go on record favoring the enactment of a statute enabling the defendant in a personal injury suit to have a medical examination of plaintiff before the trial. In some states this is permitted, not only by statute, but by case law. In those states where it is not permitted, I feel it is important that we should try to have legislation passed as a law of this kind is of great importance to Insurance Companies. A full discussion of these subjects is urged at this meeting so that our membership may know our views and aid us in the program to be decided upon at this meeting.

9. *Annual Meeting.* Many letters have been received from members of our Association extending invitations for the meeting to be held in their respective cities. Hotels and resorts have advertised their attractions. All of this has caused some uncertainty in my mind as to where our 1935 Convention should be held, in view of the American Bar Association meeting in Los Angeles during the week of July 15th, 1935.

Therefore, I thought it advisable to sound out the sentiment of our membership as to their views of meeting on the Pacific Coast, or in some of the western states, and whether we should have our meeting before the American Bar meeting. A card questionnaire was sent out to all the members, and I have tabulated for your information the result of this poll, which will be submitted when this matter is before you for discussion.

There are many factors to be taken into consideration when making a decision on this question in view of a large percentage of our membership living east of the Mississippi River. I feel sure that our committee will make a proper selection, meeting the approval of our membership.

10. *Program.* I have received many letters from our members suggesting improvement of our program at the annual meeting, such as:

(a) Papers should be discussed after reading for an exchange of ideas.

(b) More technical papers on current insurance problems.

(c) Divide Convention into groups where each group can discuss its own branch of subject.

(d) More social activity in order to become better acquainted.

We should carefully consider these matters with a view of making our Convention program attractive and interesting, and your ideas and comments thereon are requested.

Our Association I feel confident is making progress due to the keen interest manifested by the letters received from the members. It is our duty to impress upon our Insurance clients that our Association is ready at all times to render assistance in their behalf and in the furtherance of their interest. And to our membership, it is our duty to develop a feeling of good fellowship, fraternity and willingness at all times to assist each other.

Respectfully submitted,
WALTER R. MAYNE.

January 14, 1935.

Annual Convention 1935: August 28th, 29th and 30th. White Sulphur Springs, West Virginia

Mid-Winter Meeting of the Executive Committee

THE mid-winter meeting of Executive Committee of the International Association of Insurance Counsel was held at the Roosevelt Hotel, New Orleans, Louisiana, beginning Monday, January 14th, 1935, and continuing through January 15th, 1935. Present at the meeting:

President, Walter R. Mayne; Vice-Presidents, Russell M. Knepper and J. Roy Dickie; Secretary-Treasurer John A. Millener; Messrs. George W. Yancey, Lowell White, Marion N. Chrestman, Garner W. Denmead, Arthur G. Powell, John G. McKay, P. E. Reeder and R. G. Rowe.

* * *

EXCERPTS FROM MINUTES OF MEETING

The following resolution offered by Judge Powell was adopted:

"The Executive Committee orders and directs: Membership in the Association prior to the adoption of the new by-laws in 1934 having been by partnerships as well as by individuals, and under the new by-laws is by individuals only, it, therefore, becomes necessary for the Executive Committee to take the steps necessary to put this change into effect.

"It is, therefore, ordered that any and all actual partners of a law firm which, at the date on which the by-laws were adopted in 1934, was a member of this Association, shall be allowed to retain their membership in the Association without further election, provided that, by March 1, 1935, they shall have so notified the Secretary and shall have paid the dues as calculated according to Article V of the by-laws.

"After March 1, 1935, no member of a law firm, unless he shall have kept in force his membership by complying with the foregoing, shall any longer be deemed a member of this Association, unless elected to membership on formal application; though if other members of his law firm or of the same home office coterie be members of the Association, he shall be entitled to the benefit of the lower rate of dues provided for in such cases in Article V.

"It is further directed that the Secretary promptly mail a copy of this order to each law firm now member of the Association, together with a copy of Article V of the by-laws."

* * *

HAL THURMAN RESOLUTION

The sub-committee appointed by President Mayne on resolution of Mr. Hal Thurman, of Oklahoma City, offered at the meeting of Insurance Counsel at French Lick Springs in 1934, made its report through the chairman of the committee, Judge Chrestman, which report was adopted as follows:

"We, the undersigned sub-committee appointed to investigate and report on the reaction of the law lists to the contents and purposes of Mr. Thurman's resolution presented to your Committee at the French Lick Convention, beg leave to report:

"Your Committee sent to those lists who in our judgment include those specializing in listing insurance counsel, without undertaking to circularize the entire law lists throughout the Dominion of Canada and the United States. The questions propounded to elicit the attitude of the lists were, in substance, to-wit:

"1. Their reaction to the provisions of such resolution.

"2. Objections to a full cooperation by the lists in the enforcement of such requirements of the resolution.

"3. Objections to limiting the information with the listing to professional biographic sketches, lines of practice and offer to furnish references and clients on request.

"4. How to avoid ills of occasional instances of a lawyer advertising as a client a company for whom he has received only small collection items, etc.

"Answers received indicate that there is wide diversity of opinion in accordance with the practices of the respective lists.

"Of those answering who approved the resolution, we quote some of the expressions: One says, "We are in accord with the provisions of the resolution and believe that many of the ills that have crept into legal directories should be corrected" * * * "believe that lawyers should have the written consent of their clients before giv-

ing a list of such" * * * "but to require the lawyer subscribers to submit for inspection the written consent of their clients would antagonize any subscriber or prospective subscriber." "We suggest as a remedy that all mention of clients should be discontinued." The same list believes that "no useful function and only appeal to the ego and vanity" is the result of this practice.

"Some lists think "it is cheap, and the better attorneys are beginning to realize this." "There is only one remedy and that is for attorneys to live up to the highest standard of their profession."

"Another list writes: "So far as I can see, this resolution is proper and I know of no objection to it that I could suggest at this time." Another list points out the conviction "that whether consent is received or not, there is no more propriety in an attorney publishing the names of his clients than a physician publishing the names of his patients." * * * "feel that the obtaining of consent before publication of clients would at least eliminate what seems * * * to be utter impropriety of publishing such names without consent, but do not feel that this would make such publication ethical in the true sense of the word or that it will cure the attendant evils."

"Opposition to the resolution points out that Article 43 of the Canon of Ethics of the American Bar Association providing that a card published in a list "may there give reference of named clients for whom the lawyer is counsel, with their permission" is sufficient, and the honor of the lawyer is on test and it is a matter for the disciplinary committee to follow through. The opposition contends that this Association is not in position to urge the matter and should not; that it is for the American Bar Association to consider.

"One of the lists thinks that the American Bar should make it improper to list clients, but they should permit certain biographical and age facts. It expresses a desire to cooperate, however. Another thinks there is no "substantial reason for the adoption of the resolution." Another thinks the resolution would "tend to unduly complicate the listing," * * * almost impossible for lawyers to secure the necessary consent of the various clients" * * * "that the various insurance companies and their legal and claim departments would not like to cooperate in any idea that would flood them with letters from their attorneys asking for their authority, etc. * * * they do not favor this idea."

"Another thinks "Enforcement is not a proper function of directory publishers; that unimportant data such as biographic sketches should not be included in listings." This list thinks that the ills mentioned are "greatly exaggerated" and that the proposed cure is far worse for all concerned than the ills sought to be cured. It thinks that the remedy will be found in inducing a greater degree of concientiousness on the part of the lawyer, and that a resolution of that nature ought to be passed. Another list thinks that a directory publisher restricting itself to leading lawyers in each community could not properly insist upon proof of clientele, and thinks that its experience evidences care in compiling lists of clients by the lawyers.

"Thus, it will be observed that the whole subject passes back to questions of ethics. It seems to be the unquestioned practice of all Canadian lawyers not to list any clients in any such listings. In fact, very limited statements are the rule, apparently; probably only specialization in the profession, with items of address and identification. Biographical sketches are not the rule there.

"From information gathered by your Committee, it is apparent that many leading lawyers throughout the nation are refusing to list clients in any circumstances, and refusing to go further than the rule in Canada.

"It is the opinion of your Committee that true ethics would limit the lawyer to follow, in part, only, Canon No. 43 of the American Bar Association, to-wit: "A lawyer's professional card may properly contain only a statement of his name (those of his lawyer associates), professional address, telephone number, and special branch of the profession practiced." It is believed that any list which attains the position of maintaining a responsible and efficient service to business institutions, will have accomplished this by the selection of able, efficient, and ethical lawyers from actual research and investigation; that the list's reputation established on this basis is the only safe ground for permanency.

"It is, therefore, believed that the adoption of this resoluition by our Association

would constitute an act of recognition of the rightness of listing clients by lawyers in their advertising; that such act would tend to lower the ideals of the American Bar.

"We, therefore, recommend that the resolution be not adopted and not approved by this Committee; that if any action be taken by this Association relating to professional cards of lawyers that its energies be directed to the end that further modification of Canon 43 of the American Bar Association be attained, in accordance with proper ideals of the American lawyer.

"Respectfully submitted,
"M. N. CHRESTMAN, *Chairman*
RUSSELL M. KNEPPER,
JOHN G. MCKAY,
Sub-Committee on Thurman Resolution."

* * *

NEW MEMBERSHIP ROSTER

President Mayne recommended that a new Roster of members be prepared and published. His recommendations unanimously adopted were:

"I would like to take up a few matters in my report, and one will be the question of the Journal. The first thing is the recommendations with reference to the Roster of members, namely that a new Roster of members be gotten out, containing a short foreword, the purposes of the Association and the by-laws, a list of the officers and members of the Executive Committee, a list of the standing committees, general legislative committee, legislative and membership committees of each State. It seems to me that those are very important lists to disseminate among our members, so that if any questions come up, they know just whom to contact in those various States. Then a revised list of the membership by States and a list of the members in alphabetical order. The wording on this binder should be changed. I dislike to go to the expense, but I would like to get your views on that. There has been some controversy over the binder."

* * *

NO ADVERTISING IN JOURNAL

Upon motion made by Mr. Knepper, and seconded by Judge Powell, the meeting instructed the Editor of Journal not to accept advertisements for the Journal.

PRICE OF JOURNAL

The meeting fixed the price of the Journal as follows: $2.00 per year to members who pay only $3.00 per year as dues; $4.00 per year to outsiders. ($12.00 a year membership carries subscription to Journal).

* * *

BINDER FOR JOURNAL

The Executive Committee authorized and instructed the Editor of the Journal to secure prices for permanent binders for the Journal and as soon as possible advise the membership.

* * *

WARNING—SUBSCRIPTIONS TO BAR LISTS

President Mayne read to the meeting a letter from Mr. Frank Normann, advising that his firm had been visited by a solicitor for a bar list, or service to lawyers, and that the solicitor claimed his organization controlled the business of a number of insurance companies, and urged this member to subscribe to the service. The letter advised that after a careful investigation and after receiving letters from the insurance companies whose business such organization claimed to control, he found that the organization did not control any business of any insurance companies, and he further determined that the listing was of no value.

The meeting instructed the Editor to refer to this letter in the January Issue of the Journal and to urge the membership to be on guard against such solicitations, and not to subscribe to any unknown bar list or bar service without first getting in touch with the officers of the Association, who have available for the membership information regarding the worthwhile and the not worthwhile listings or service.

* * *

GOLF PRIZES

The meeting, while appreciative of golf prizes heretofore offered by friends of the Association who are not members of the Association, resolved that henceforth it would be best for the Association not to accept golf prizes or other gifts from persons, firms, or corporations not members of the Association.

* * *

REVISED ROSTER

The secretary reported that several hundred firm members had not replied to his request

for designation of the member of the firm who would take out a $12.00 per year membership and $3.00 per year additional memberships for the same firm, and stated that he was getting out another letter to the members who had failed to reply. The committee instructed the Editor to call to the attention of the membership the fact that a new Roster would shortly be published, with a new binder, and distributed among the members and to insurance companies interested, and that, therefore, it was important that all members immediately notify the secretary of the individual members of the firm who would become members of the Association. The membership will further be interested in knowing that hereafter in the Roster of the Association the name of the member will appear with his firm name immediately following, as new By-Laws provide for the individual, rather than the firm, to be the member.

* * *

LEGISLATIVE

President Mayne read to the Executive Committee a letter from Mr. Hervey J. Drake, Chairman of the Legislative Committee of the Association, and also attorney for the Association of Casualty & Surety Executives, recommending that the legislative committees and members of the Association assist in certain matters. By resolution the letter was ordered published in this issue of Insurance Counsel Journal, with the consent of Mr. Drake:

January 8, 1935.

Dear Mr. Mayne:

I appreciate your asking me to advise you of the legislative situation and wherein the International Association may help us during the pending legislative sessions, and its assistance will be needed more than in any previous year. Already a bill, providing for a Monopolistic State Workmen's Compensation Insurance Fund, has been introduced in New York and will also be introduced in other states. The same is true of a bill providing that all occupational diseases, without classification, shall be covered under compensation policies, and of a bill providing for free choice of physicians by the injured employee, denying the insurance company the right to examine or join in the examination of the injured employee. These bills are most objectionable and must be vigorously opposed. If the Monopolistic State Fund bill is enacted, insurance carriers will, of course, be eliminated from compensation business, and if the latter two are enacted—particularly the occupational disease bill—the companies undoubtedly will also have to stop writing the business. The enactment of the latter two bills would also undoubtedly force many employers out of business, or force them to move to other states for the cost of insurance with companies or in a state fund would make it impossible for them to compete with manufacturers in states where benefits to employees are lower, and consequently the cost of insurance is lower.

The situation is a threat not only to our companies but also to everyone who receives his livelihood in whole or in part from insurance companies—whether they be lawyers or stenographers, etc—and every such person should actively join in opposing such legislation in his state by communicating with his member in the Legislature, personally or by mail. It is entirely illogical and wrong, at a time when the Government and the states are trying in every way to *increase employment,* that labor interests should attempt to have legislation enacted which will largely *increase unemployment.* It is also illogical and wrong, at a time when the Government and the states are trying to find new sources of taxation and are increasing taxes on those already overburdened with taxation, that there should be enacted laws which will deprive the states and the Government of the tremendous amounts of taxes paid by insurance companies on their compensation business, as well as the income taxes paid by those to whom the companies pay commissions or fees on account of this business.

The enactment of laws providing for state compensation will inevitably lead to laws for the state writing other kinds of insurance, such as automobile, surety and fidelity bonds of public officials. Such laws will also be proposed in some states and must be vigorously opposed.

There is much constructive legislation that we will attempt to have enacted, difficult as this will be. This relates principally to surety companies. We have prepared and sent to various states bills providing that executors, administrators, etc., may agree with their sureties for joint control of fiduciary funds; also bills requiring

that these fiduciaries be required to submit to the court for verification the securities and evidences of deposit or investment which are set forth in their sworn accountings; also bills relieving public officials of liability for loss of funds due to failure of depositories; also bills relieving tax collectors of the duty, but making it optional, to call personally on each delinquent taxpayer and demand payment, and to proceed to sell his personal property. It is impossible for sureties to issue bonds guaranteeing that tax collectors will faithfully perform the duties of their office when such duties are imposed upon them, or for sureties to guarantee payment of the tax roll.

We are also advocating the enactment of a law to cope with unauthorized insurers which, if enforced, should largely eliminate such competition. This bill reads as follows:

> "No person or corporation shall in this state act as agent for any insurer not licensed by the Insurance Commissioner to transact business in this State, or for another negotiate for or place or aid in placing insurance covering any property or risk in this state with any such insurer; nor shall any person or corporation in this state in any other manner aid any unlicensed insurer in effecting insurance or transacting insurance business or performing its contracts in this state, either by fixing rates, adjusting or investigating losses, inspecting or examining risks, acting as attorney-in-fact or as attorney for service of process, or otherwise. Any person or corporation violating the provisions of this section shall be guilty of a misdemeanor."

We may also advocate laws requiring banks to place their bonds and other insurance with authorized companies, or laws imposing a tax on premiums payable to unauthorized insurers. Perhaps the latter will be unnecessary if the former law—as to which I believe no constitutional questions are involved—is enacted.

You have suggested that you further the enactment of laws permitting insurance companies to have a physical examination of injured persons, for which injuries the companies may be liable. This is very constructive legislation. We have had the laws of the states examined and expect to prepare bills for several of them. You will be advised when such bills are introduced and also of other bills in various states which I have mentioned above.

As to automobile legislation, while we are vitally interested in Drivers' License Law, Guest Laws, Inspection and other Safety Laws, and Financial Responsibility Laws we have found it inadvisable to openly sponsor them or have them introduced by insurance organizations, for then it is claimed that they are for our benefit and they are opposed for that reason. We, of course, favor them. We are opposed to compulsory automobile insurance laws but favor the so-called A. A. A. Financial Responsibility Law (1932 Revision) with some further modifications that are now being prepared.

With much appreciation of your valuable assistance and cordial greetings to the Executive Committee, I am, with kindest personal regards,

Sincerely yours,
H. J. DRAKE.
Attorney.

* * *

1935 CONVENTION

After careful consideration, the Executive Committee fixed the next meeting of the Association to be held at White Sulphur Springs, West Virginia, August 28th, 29th and 30th, 1935. SPECIAL RATES have been offered by the GREENBRIER HOTEL, which is one of the outstanding resort hotels of the country, as follows:

European Plan: $4.00 per day per person where two persons occupy a double room having twin beds and bath; $4.50 per person where two persons occupy two single rooms with bath between; $5.00 per day for a single room with private bath.

American Plan: $8.00 per day for single room; $16.00 per day for double room.

* * *

MEMBERSHIP

The Executive Committee ruled that members of firms which have been members may take out individual memberships in association prior to March 1st, 1935, by notice to the Secretary. After March 1st, 1935, application for membership must be sent to the Secretary and passed on by the Membership Committee.

Taking Poison and Inhaling Gas as an Exception to the Double Indemnity Provision

By L. A. Stebbins
of Chicago, Chairman Committee on Life Insurance Law of the International Association of Insurance Law

IN an early New York case (Paul vs. Travelers Ins. Co., 112 N. Y. 472, 3 L.R.A. 443, 20 N.E. 342), the policy provision was:

> "provided, always that this insurance shall not extend to any bodily injury of which there shall be no external and visible sign upon the body of the insured * * * not to any death or disability which may have been caused * * * by hernia, bodily infirmities * * * *nor by the taking of poison, contact with poisonous substances, or inhaling of gas,* or by any surgical operation, or medical treatment, nor to any case except where the injury is the proximate and sole cause of the disability or death, etc."

The case was submitted on an agreed statement of facts, which showed that the insured came to his death by breathing illuminating gas in a room in a hotel.

The Court of Appeals in New York held the company was liable nothwithstanding the admitted fact that he came to his death by "inhaling of gas" upon the theory that

> "in expressing its intention not to be liable for death from 'inhaling gas,' the company can only be understood to mean *a voluntary and intelligent act* by the insured, and not an involuntary and unconscious act."

As the double indemnity provision in that case (as in all other cases) referred to death through "external, violent and accidental means," it is difficult to see how "a voluntary and intelligent act by the insured" could be an accident.

The doctrine of the Paul case was followed by the Supreme Court of Illinois in the cases of Healey vs. Mutual Accident Assn., 133 Ill. 556, Travelers Ins. Co. vs. Dunlap, 160 Ill. 642, Metropolitan Accident Assn. vs. Froiland, 161 Ill. 30, and Fidelity & Casualty Co. vs. Waterman, 161 Ill. 632, Travelers Ins. Co. vs. Ayers, 217 Ill. 390, and by the Supreme Court of Pennsylvania in Pollock vs. United States Mutual Accident Assn., 102 Pa. St. 230.

In the subsequent case of Porter vs. Preferred Accident Insurance Co., 95 N.Y. Sup. 682, 109 App. Div. 103, the exception was "*voluntary or involuntary inhalation of any gas* or anaesthetic."

Apparently here the exception was drafted with reference to curing the difficulty found by the Court of Appeals of New York to exist in the policy under consideration in the Paul case. In this latter case the Appellate Division of New York held that the company was not liable, the Court saying:

> "It must be conceded that an accident insurance company has the right to limit its liability in any reasonable manner; has the right to provide that in no case will it be liable if the death of the insured results from the effects of gas, inhaled voluntarily or involuntarily."

This holding by the Appellate Division was affirmed by the Court of Appeals without opinion in 186 N.Y. 599, 79 N.E. 1114.

In the case of Riley vs. Interstate Business Men's Accident Assn., 184 Ia. 1124,169 N.W. 448, 2 A.L.R. 57, this question arose under an exception exempting the company from liability from death or disability "*resulting from poison, voluntarily or involuntarily* taken, administered, absorbed or inhaled."

With regard to the doctrine of the Paul case, and other cases following the doctrine of that case, the Supreme Court of Iowa said:

> "There is a long line of authorities in harmony with Paul vs. Travelers Ins. Co. supra, and like cases cited, but the language of the policy involved in none of them was identical with that in the case at bar." The company was held not liable.

In the case of Kennedy vs. Aetna Life Insurance Co., 31 Tex. Civ. App. 509, 72 S.W. 602, the language of the exception was: "vol-

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untary or involuntary taking of poison." The company was held not liable, the Court saying:

"It is difficult for us to conceive of a case of taking poison that is not included in either the term 'voluntary' or 'involuntary,' as used in the policy. The usual and ordinary meaning of the terms would include, in one or the other, every manner of taking poison; therefore we do not feel warranted in giving to them a meaning less restricted than they usually import."

In the case of Birss vs. Order of United Commercial Travelers of America, 109 Neb. 226, 190 N.W. 486, the exception was:

"Benefits * * * shall not cover * * * any death * * * resulting from * * * inhaling of gas or asphyxiation (voluntary or involuntary, conscious or unconscious)."

The company was held not liable, the Court saying:

"Under the terms of the policy we are unable to see but that the insured in this case died as a result of the inhalation of gases which, though accidental, must have been either voluntary or involuntary, conscious or unconscious, and therefore within the express exception of the policy."

In the case of Minner vs. Great Western Accident Assn., 99 Kans. 575, 162 Pac. 1160, L.R.A. 1917 (D) 738, the exception was:

"Disability or loss, fatal or otherwise, caused by or resulting wholly or in part, directly or indirectly, from * * * gas * * * in any manner taken or administered, *voluntarily or involuntarily* * * * shall be classified as sickness and shall be subject to the provisions, conditions, and limitations governing sickness insurance as herein set forth, the original cause of such disability notwithstanding."

The Supreme Court of Kansas in this case reviews the New York cases and the Illinois cases heretofore referred to, and the case of McGlother vs. Provident Mutual Accident Co., 32 C.C.A. 318, 60 U. S. App. 705, 89 Fed. 685, and then the Court says:

"Without approving or disapproving the criticism contained in the opinion of the United States court of appeals, it is sufficient to say that the policy under consideration was evidently phrased with the purpose of avoiding the effect of the decisions of the state courts. If ordinary English words, given their ordinary meaning, can accomplish such a purpose, those employed in the policy sued on did so." The company was held not liable.

"VOLUNTARY OR OTHERWISE"

Thus far in reviewing the cases where the company has been held not liable, we have been dealing only with exception clauses containing the words "voluntary or involuntary."

About forty companies, among which are many of the larger companies of this country and Canada, use the phrase "voluntary or otherwise." As to whether or not this form of exception relieves the company from liability, first came before a higher court for determination in the case of Northern Trust Co. vs. Central Life Insurance Co., 274 Ill. App. 551 (April, 1934). The Appellate Court of Illinois held the company was not liable.

As the opinions of the Appellate Court of Illinois are not published in the Northeastern Reporter, we quote from this case at some length:

"Counsel for plaintiff chiefly rely on the cases of Healey vs. Mutual Accident Ass'n, 133 Ill. 556; Travelers Ins. Co. vs. Dunlap, 160 Ill. 642; Metropolitan Accident Ass'n vs. Froiland, 161 Ill. 30; Fidelity & Casualty Co. vs. Waterman, 161 Ill. 632; Travelers' Ins. Co. vs. Ayers, 217 Ill. 390; while counsel for defendant cites Porter vs. Preferred Accident Ins. Co., 95 N.Y.S. (App. Div.) 682; Riley vs. Inter-State Business Men's Accident Ass'n, 184 Iowa 1124; Kennedy vs. Aetna Life Ins. Co., 31 Tex. Civ. App. 509; Birss vs. Order of United Commercial Travelers of America, 109 Neb. 226; Minner vs. Great Western Accident Ass'n, 99 Kan. 575, and other cases.

The wording of the policies in none of the cases cited is the same as the provision in the rider under consideration, and we can come to a better interpretation of the words in question by a reading of them than by analyzing and distinguishing cases, or in any other way.

The rider says that the double indemnity benefits shall not be payable if the insured's death resulted from the 'inhaling of gas, whether voluntary or otherwise.' We think this means that if the insured

died as a result of inhaling gas, no recovery can be had under the rider. It was intended that there would be no double indemnity if the insured died as a result of inhaling gas, whether inhaled voluntarily or involuntarily. To give to the words the meaning contended for by counsel for plaintiff, the words 'or otherwise' would have to be eliminated, and we think we are not warranted in eliminating those two words, but must construe the contract as made by the parties, giving effect to all of it.

Obviously the parties had the right to so contract if they desired. The rider provided that the double indemnity was not payable if the death of the insured resulted from self-destruction, whether sane or insane. The company had a right to insert this provision. It had equally such right to provide that the double indemnity should not be payable in case the insured died from inhaling gas."

The Supreme Court of Illinois denied a petition for a writ of certiorari in this case.

In the very recent case of King vs. New York Life, 72 Fed. (2) 620, (U.S.C.C.A. 8th, August, 1934), the exception was:

"Double Indemnity shall not be payable if the insured's death resulted from self-destruction, whether sane or insane; from the taking of poison or inhaling of gas, whether *voluntary or otherwise.*"

The Court held the company was not liable, citing among other cases, Northern Trust Co. vs. Central Life Ins. Co., 274 Ill. App. 551.

Some Other Cases in Which the Exception Was Not "Voluntary or Involuntary" or "Voluntary or Otherwise" But in Which the Company Was Held Not Liable.

These cases, without reviewing them at length, are as follows:

McGlother vs. Provident Mutual Acc. Co., 89 Fed. 685;

Hawkeye Commercial Men's Assn. vs. Christy, 294 Fed. 208;

Preferred Acc. Ins. Co. vs. Robinson, 45 Fla. 525, 33 So. 1005, 61 L.R.A. 145, 3 Anno. Cas. 931;

Miller vs. Fort Wayne Mercantile Acc. Assn., 87 Ind. App. 561, 153 N.E. 427;

Harrington vs. Interstate Business Men's Acc. Assn., 210 Mich. 327, 178 N.W. 19;

Urian vs. Scranton Life Ins. Co., 310 Pa. 144 165 Atl. 21;

Ferris vs. Southern Surety Co., 157 La. 910, 103 So. 259.

CONCLUSION

In five cases it has been held that the phrase "voluntary or involuntary" exempts the company from liability. These cases are found in New York, Iowa, Texas, Nebraska and Kansas.

In two cases it has been held that the phrase, "voluntary or otherwise" exempts the company from liability. These cases are found in Illinois (Appellete Court certiorari denied by Supreme Court) and the United States Circuit Court of Appeals for the Eighth Circuit.

The phrase "taking of poison or inhaling of gas," without other qualifying or explanatory words, probably does not relieve the company from liability, except in the Federal Court. See Hawkeye Commercial Men's Assn. vs. Christy, 294 Fed. 208 (U.S.C.C.A. 8th).

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Bogus Claimants and Malingerers

By Remington Rogers
Tulsa, Oklahoma

THIS investigation was made as a part of the study of abuses of the total and permanent disability clause by your Committee on Accident and Health Insurance, with a view to determining to what extent bogus claimants and malingerers have become a burden on this particular type of insurance; what steps have been taken to stop such losses, and what, if any, improvement can be suggested in the methods of detecting and defeating unjust claims of this kind.

PRESENT UNSATISFACTORY CONDITION

Until the last few years, life long benefits in event of total and permanent disability constituted an effective inducement in selling insurance. But now, except where the disability is the result of an accident, the majority of the companies limit their liability to periods of one or two years only and have completely abandoned the larger field. In so far as bogus claimants and malingerers contributed to their staggering losses, the companies have applied a remedy as effective, but as drastic, as that suggested by the farmer's friend, who proposed burning the barn to get rid of the rats.

The cases of deliberate frauds are relatively few. The company complaints rather appear in border-line cases. What claims are in fact bogus? When is an assured malingering? As we consider the steps taken by the companies some typical cases may show the difficulty in even defining our terms.

ELIMINATING THE UNDESIRABLE RISK THROUGH THE APPLICATION BLANK

One of the safeguards relied upon by the companies is the elaborate questionnaire in the application blank, wherein the assured is bound by definite representations and warranties. Suppose he has stated that he has received no medical attention within five years, and after a claim of total disability is presented, the investigation discloses that applicant had, in fact, repeatedly consulted some physicians, and obtained treatment. Does this mean his claim is bogus? In at least one state it has been held that this representation as to medical attention, I quote from the opinion,

> "means medical or surgical attention for some illness or disease of substantial importance, or of a serious nature, and not consultation, treatment or attendance concerning some trival or temporary indisposition or feeling that has passed away without affecting the general health."
> (Note 1).

In other words, the assured obtains his policy by a false statement as to the very material fact of whether he has received medical treatment within a certain period. Disability follows, but the defense of such misrepresentation fails unless it can be shown that the condition for which he was treated was a disease of "substantial importance," or that it failed to pass away "without affecting the general health." Whether the claim is fraudulent or honest, depends not on the harsh, but simple rule of the law, but a rule of facts, and what physician can claim the omniscience necessary to classify human ailments in such fashion or to proclaim that even the headache and the "hangover" can pass away "without affecting the general health?"

Further, if a policy is obtained by false and fraudulent misrepresentations, but the soliciting agent knows of such falsity, the company is estopped to deny the validity of the policy. (Note 2).

Nor is it a bogus claim where the disabling illness "becomes manifest" after the effective policy date, although the illness was in fact latent in the body prior thereto. (Note 3).

ELIMINATING THE UNDESIRABLE RISK BY ADVANCE INVESTIGATION

Another method by which the companies have tried to escape bogus claims is by investigation before the policy is issued. Most of the "Conference companies" appear to be subscribers to one or more of the bureaus through which the insurance companies in most cases are able to obtain, in advance, that is, before assuming the risk, a disinterested report on the reputation, financial standing, past insurance experience, and other important matters tending to show whether or not the risk is desirable. Some of these preliminary investigations are apparently thorough and searching, but if the applicant is buying the policy for the purpose of fraud, either collusion with the agent, or the simple process of changing his name, will, in most cases, eliminate whatever safety might otherwise be obtained through the Bureau.

But, however exhaustive the preliminary inspection many types of claim called bogus or malingering, could never be avoided by such methods alone.

ELIMINATING LOSSES BY PROPER POLICY PROVISIONS

For example, a policyholder was engaged in the retail automobile business. He had an undoubted attack of pneumonia, upon recovery from which his doctor recommended that

he go to Florida in order to avoid the rigors of the winter in a more northern state. This patient had an accident and health policy and also had two life insurance policies each containing life long disability benefits. The automobile business was not good. The patient went to Florida and after several months of disability benefits, the accident and health company made a further investigation of the case. Assured was found at one of the resorts enjoying the motoring, fishing and other sports. The investigator found he was doing everything that any other vacationer in Florida was doing, and suggested that by reason of his recovery, it was, therefore, time to terminate the disability benefits. The assured, however, stated that he was under the care of a Florida physician to whom he reported weekly or fortnightly, and in whose opinion there was danger of a relapse if he should leave the balmy and salubrious climate of the State of Florida. Obviously, according to the contention of the assured until he was well enough to return to his business, in a colder climate, he was totally disabled, and the benefits of the policy should continue. The claims Superintendent of that Company felt that hazard such as this was never in the contemplation of the parties; that the man should be apparently physically well and able to indulge in all forms of outdoor sports, and yet for the purposes of the policy was disabled. Would you say this assured was malingering?

In another case, as nearly as I could gather the facts from the opinion, an assured had low blood pressure, an abdominal disturbance, and a so-called "nervous breakdown" which rendered it "unsafe" in the opinion of his physician for him to continue at his work. On his doctor's advice he took a trip to Europe. It was held that this was total disability. (Note 4). From your experience with "nervous breakdowns," low blood pressure, high blood pressure, and the like, the difficulties of making profits at the present time, and the attractiveness of a trip to Europe, would you blame the insurance company for raising the question, if an assured is well enough to do these things, is he in fact totally disabled?

Further complaints of malingering are made in cases where the vocational rule has been adopted. Under the language of some policies, and in some states, it has been held that "total and permanent disability" has to do with the occupation for which the man has been trained and that if his disability is such that he can no longer carry on his chosen vocation, that then, as far as the insurance carrier is concerned he is totally disabled. Yet the converse of this picture is apparently not true.

A case was cited in which a sheriff sustained accidental injury which undoubtedly brought him within the classification of being totally and permanently disabled. He was nevertheless able to see that his deputies discharged the duties of his office. He did not resign, drew his salary, and at the expiration of his term, he was re-elected. The insurance carrier attempted to apply the converse of the vocational rule and contended that although he was totally and permanently disabled according to all general standards, yet since he was apparently able to continue the discharge of the duties of his "chosen vocation" and in any event was enjoying the emoluments thereof, he was not totally and permanently disabled within the meaning of this rule of law.

However, the opposite conclusion has been reached in North Carolina. (Note 5). In that case although the testimony was to the effect that the assured was disabled and incapable of rendering any service, nevertheless recovery was denied upon the grounds that the assured was actually drawing his salary as a court crier.

Which of these was a bogus claim? In which case, can it be said the assured was malingering in claiming his disability benefits, while actually disabled, and yet while drawing his regular stipend?

Or, assume a case in which an assured is admittedly disabled. According to undisputed medical opinion, the cause of the disability could probably be completely removed by a simple operation, without endangering assured's life or health. The assured refuses to submit to any operation. Is he malingering? In one jurisdiction, at least, it has apparently been decided that the assured must submit to the operation tendered by the company, or his benefits may be discontinued. (Note 6). In that case, however, an infected tooth and diseased gums and tonsils were apparently the only pathology.

The solution of these problems is obviously not any preliminary investigation as to the

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assured's past record, but a uniform policy with standard definitions, as to just what does constitute total disability.

REDUCING LOSSES BY PROPER CLAIMS WORK

But no uniform policy provisions, no quantity of detailed representations in the application, and no report on the moral hazard of the applicant, however complete, can ever take the place of effective claims work. Admitting that there is some ground for the feeling of many of the companies, that even when they have a meritorious defense of fraud in the application, or malingering in the coverage, an adverse decision may still be anticipated, nevertheless, perhaps the blame for their unfortunate and unhappy court experience is not entirely chargeable to the judges.

When a claim is presented under one of these policies, it seems to be the practice either to have the same investigated by a regular claims representative of the company, or, if the company has no representative in the vicinity, the investigation in most cases, is apparently referred to some lay agency. Because the great majority of claims are paid as a matter of course, this method has seemed inexpensive and economical. But, where this practice has been followed and litigation later results, the attorney who is called in to conduct the defense labors under very serious disadvantages. In most cases, when the claim is first presented, the assured expects, or at least hopes for, prompt adjustment and settlement without litigation. At that time he is friendly. Full, detailed and complete investigation can be made, with good cooperation on the part of the claimant. But when this investigation has been made by some lay agent, and recovery being denied, an attorney is later retained to defend the consequent litigation, the attorney is confronted with a very different situation. The assured has naturally become hostile. He is represented by an attorney through whom negotiations must thereafter be had. The written statements, proofs of loss, and written reports of the attending physicians make at best but sorry substitutes for the first-hand information which the attorney might have enjoyed, if the claim had been referred to him in the first instance, and the investigation from the beginning had been under his direction and control. Matters, which from the legal point of view, go to the very vitals of the controversy, and on which success or failure may depend, are sometimes either inadequately covered or perhaps not touched upon at all, by the reports of even experienced lay agencies, and, as suggested above, *after* litigation has developed, in many cases it is too late for the attorney to supply the deficiency. The attitude of the claimant, and the relation of the parties have so changed that the attorney is forced to rely upon the investigation already made. The company suffers because of this handicap placed upon its attorneys and then blames the court for the miscarriage of justice.

I realize that in making this statement as to the real cause of many decisions about which the companies complain, I am exposing myself to the criticism that I am touting the services of lawyers as opposed to lay agencies, for the financial gain of the profession. But be the criticism what it may, these facts, that are known to every practicing lawyer, should be brought home to the insurance companies. With due credit for the excellent work which characterizes some of these lay agencies, with frank recognition that investigations by lawyers sometimes leave much to be desired, and fully realizing that whatever I say may be attributed to self-interest, I nevertheless assert that a most frequent cause of unjustified losses by the companies, is the fact that the attorney was not retained until the best opportunity for effective investigation has slipped by. Too often, when the file, turned over to the lawyer for defense, reveals a slovenly, careless investigation, the lawyer feels it unprofessional, or at least improper, to give damning criticism of the work of another representative of the company which it deserves. Even a suggestion of such criticism may be construed at the home office as the lawyer's attempt to establish an alibi for his own failure if the case is subsequently lost. In consequence, the lawyer accepts his handicap in silence, and year after year, claims are regularly forwarded to these lay agencies, the golden opportunity for uncovering the facts which are controlling in court, is lost, the lawyer labors under every possible handicap, the courts are criticised as prejudiced against the companies, and the actual truth is never discovered by the claims superintendent.

It may perhaps well be questioned whether

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the economies effected by this routine method of handling claims, off-set the very substantial losses resulting from this handicap under which defense counsel is so frequently placed.

When fraud is suspected and the matter finally reaches the attorney for defense, success depends in most instances on the care and diligence of the attorney. What at first seem trivial and unimportant circumstances, upon thorough investigation may be the key to important and unforeseen results. Hard work and careful attention to every detail of the defense, and especial care in the preparation of the evidence to be introduced, seem the essence of the soundest technic for successful defense yet evolved. With an overwhelming array of facts, and then more facts, carefully and forcefully presented, the idea, or openly voiced suspicion, that the company is relying upon technicalities can in many cases be completely demolished.

REDUCING LOSSES BY MAKING MEDICAL TESTIMONY AVAILABLE

Frequently the medical testimony is the turning point in the case. Here again, the attorneys for the companies work under severe limitations.

Assume a policy issued on an application in which assured stated he had never had any kind of heart trouble. A claim is presented for total and permanent disability due to some cardiac affection. Investigation discloses repeated heart attacks prior to the application, in which assured, if you please, was attended by the same doctor who now certifies his disability. Liability is denied, a law suit follows. How can the lawyer prove the previous heart attacks?

> The rule seems to be, (40 Cyc. 2381): ". . . . the disclosure by a physician against the will of the patient of communications from the patient, or information concerning the patient acquired by the physician in his professional capacity, is very generally forbidden by statute . . . . (2387). A physician cannot testify as to the physical or mental condition of his patient; nor can he disclose the nature of the ailment with which the patient was afflicted and for which the physician treated him."

In some jurisdictions, judicial construction has extended this statute privilege of the physician to include also the testimony of nurses acting under the orders of the physician, and even to hospital records, at least where the doctor prescribed the hospitalization. The argument is that it would defeat the entire purpose of the statute to prohibit the *doctor* from testifying, and at the same time permit others, acting under his direction, to reveal the very facts which the statute requires the doctor to keep inviolate.

It has apparently been thought that unless the lips of the attending physician are sealed, people would be more reluctant to submit their persons to physicians for examination and treatment, and fearful to detail the truth of some of their complaints. With this fundamental purpose, we have no quarrel, but, it does appear that in many cases this privilege is made the very instrument of fraud. If the plaintiff denies the previous disability, and refuses to give his consent to any disclosure by his attending physicians as to his past ailments and disability, it may become impossible for the attorney to prove the facts, with a consequence that the court never learns the actual truth, or the reason why liability was denied.

In New York, it is now the rule by judicial decision, that the statutory privilege of a physician cannot be used to perpetrate such a fraud upon the insurance company at least where the same disease is involved. (Note 7).

Contrary decisions have been reached by the trial courts in other states. It is submitted that the privilege of attending physicians and surgeons can well be continued, but this privilege, like other privileges, may legally be waived; that it may not only be the subject of an express waiver by the patient, such as has been included in the applications of some of the companies, but that it might well be provided by statute that the privilege of attending physicians is impliedly waived, and that he may be subpoenaed and compelled to testify as to all information obtained by him, in treating and attending a patient, in those cases in which the patient has become a party plaintiff, and his physical or mental condition at some previous time is a matter in dispute.

CONCLUSION

It is, therefore, submitted that in addition to the representations in the application, and the reports of the Bureaus the following simple and practical methods should substantially reduce the successful operations of bogus claimants and malingerers:

First: Uniform policy provisions, which in the course of a few years would receive such

a body of judicial construction that it will definitely appear whether a claim is bogus or in good faith, and whether the disability is total and within the policy, or is excluded.

Second: Contract or statutory provisions permitting the company to tender simple operations, and allowing them to discontinue benefits if the assured refuses to submit himself thereto.

Third: Contract or statutory waiver of the privilege of attending physicians when called as witnesses, to require complete disclosure of the truth.

Finally: Recognition of the fact that any claim may become a law suit, and the logical corollary that from the beginning the investigation and adjustment should be handled by, or under the supervision of, qualified insurance lawyers.

It is perhaps not too much to hope that with these simple and yet promising remedies at hand, the companies can again find it profitable to write not only accident, but also health and life insurance, providing life-time disability benefits. Sales records would seem to indicate that the public desires and appreciates this form of insurance; that there is a large and available market for the same. It is not always necessary to junk an automobile because a tire blows out, and it might well be questioned whether it is necessary to abandon this entire field of insurance because abuses have crept in. It is the hope of your committee that by complete and exhaustive study of the real nature and extent of the abuses, and an earnest effort to recognize and meet them as such, that these losses can be eliminated, and the unquestioned advantages of this form of insurance can again be made available to the insuring public.

CITATIONS

Note 1—Federal Life Insurance Company vs. Summergill, 166 SE 54, (Ga. 1932).

Note 2—National Cas. Co. vs. Borochoff, 165 SE 905, (Ga. 1932).

Note 3—Smith vs. Benefit Assoc. 244 NW 817, (Minn. 1932).

Note 4—Collis vs. Mass. Bonding & Ins. Co. 236 App. Div. 525, 260 N. Y. Supp. 241.

Note 5—Thigpen vs. Insurance Co. 204 No. Car. 551, 168 SE 845.

Note 6—Cody vs. Insurance Co. 163 SE 4, (W. Va.)

Note 7—Steinberg vs. New York Life Ins. Co. 263 N. Y. 45.

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Recent Cases of Interest

YOUR Editor is indebted to Messrs. Estabrook, Finn & McKee, of Dayton, Ohio, for calling his attention to the case of the *J. C. Penny Co., Inc. vs. Robison,* which, when printed, will be found in 128 O. S. 626. The syllabus of the case is as follows:

Negligence. Customer slipped and fell on storeroom floor. Duty to exercise ordinary care to keep storeroom reasonably safe—Not negligence per se to oil floor—Storekeeper to exercise ordinary care in oiling and maintaining floor thereafter—Testimony that customer slipped and fell, insufficient—Testimony of storekeeper's negligent act or omission, necessary—Insufficient proof of storekeeper's negligence—Prejudicial to submit case to jury when jury question not involved.

1. A storekeeper owes to customer, shopping in his store, the duty to exercise ordinary care to have and keep his storeroom in a reasonably safe condition.

2. While the oiling of floors in storerooms is by no means a universal practice, it is quite common, and it is not negligence per se to have an oiled floor in a storeroom, the duty on the part of the storekeeper toward his customers in reference thereto being the exercise of ordinary care in the application of the oil to the floor, and the maintenance of the floor thereafter.

3. The standard would be that degree of care which persons of ordinary care and prudence are accustomed to use in oiling the floor of a storeroom and maintaining such floor in its oiled condition, having

due regard to the rights of others and the objects to be accomplished.

4. In an action for personal injury, brought by a customer against a storekeeper predicated upon the alleged negligence of the storekeeper in oiling and maintaining a floor in such storeroom in a dangerous condition, it is not enough to produce testimony showing that the customer slipped and fell on an oiled floor in such storeroom. There must be testimony tending to show that some negligent act or omission of the storekeeper caused the customer to slip.

5. Testimony to the effect that after the customer fell there was a mark on the floor where the customer's heel had slipped, that she had some oil or black substance on her hand, dress and stockings, and that the rubber tap had come off the heel of the customer's shoe in falling, affords no question for the jury. Considering such testimony in its most favorable light toward the customer, it constitutes no proof of negligence on the part of the storekeeper.

6. Under our law it is just as pernicious to submit a case to a jury and permit the jury to speculate with the rights of citizens when no question for the jury is involved, as to deny to a citizen his trial by jury when he has the right.

* * *

MINNESOTA COURT HOLDS THAT ADMINISTRATOR OF CHILD MAY RECOVER AGAINST FATHER OF CHILD UNDER WRONGFUL DEATH STATUTE NOTWITHSTANDING WIFE OF DEFENDANT WAS THE ONLY ONE WHO HAD ANY INTEREST IN RECOVERY.

Your Editor is indebted to the firm of Messrs. Stevens & Stevens, of Minneapolis, Minnesota, for calling his attention to the case of *Albrecht v. Potthoff*, reported in 257 N. W. at page 377. The following is a quotation from this decision:

"The appeal raises a somewhat new question in this court, and counsel concede that no case precisely in point on the facts has been found by them. The question is: Can the administrator of the estate of a deceased person recover in an action for wrongful death of a decedent where the sole beneficiary, in case a recovery is had, is the wife of the defendant, the defendant being the person whose negligence caused the death?

Concededly, under our decision, the wife cannot recover against her husband for a tort against herself personally. Woltman v. Woltman, 153 Minn. 217; 189 N. W. 1022, and cases there cited.*****

The defendant suggests, and to some extent argues that to permit recovery in this kind of an action will encourage perjury and fraud. This claim would seem to be based on the premise that the defendant carried liability insurance and that the insurer might be defrauded and prejudiced. There is no direct charge of perjury or fraud. It was not, and could not well be an issue in the case. *Careful insurers can* readily relieve themselves from liability in *such cases by their policy contracts.*" (Underscoring supplied).

* * *

THE ALABAMA SUPREME COURT CONSTRUES HEALTH AND ACCIDENT PROVISION OF AETNA POLICY.

In the case of *Burchfield vs. Aetna Life Insurance Company,* decided by the Supreme Court of Alabama within the last few weeks, the following provision of the Aetna Life Insurance Company policy was passed upon:

"If total disability of the insured begin after the date of this policy and before age sixty, and if due proof be furnished the Company after such disability has existed for a period of six months and if such disability presumably will during lifetime prevent the insured from pursuing any occupation for wages or profit, or if the insured shall suffer the entire and irrecoverable loss of the sight of both eyes or of the use of both hands or both feet or of the use of one hand or one foot, and if proof of such loss be furnished to the company before the insured attains the age of sixty years, the insured shall be deemed to be totally and permanently disabled within the meaning of this policy.

"Upon surrender of this policy and upon receipt at the home office of the company, during the continuance of this policy, of due proof of such total and permanent disability, the company will waive further

payment of premium for the insurance and will pay to the insured, in lieu of all other benefits, the sum then insured."

The court said:

"As we construe the provisions for the waiver of premiums, and the payment of the benefits claimed, there is no uncertainty or ambiguity in the contract, and this case, in our opinion, falls within the influence of, and is controlled by our decisions in the cases of *New England Mutual Life Ins. Co., v. Reynolds,* 217 Ala. 307, 116 So. 151; *McGifford v. Protective Life Ins. Co.,* 151 So. 349; *Equitable Life Assur. Soc. v. Dorriety,* 157 So. 59, and our recent case of *Annie Mae McCutchen, Guardian, v. All States Life Ins. Co., MS.*"

The court further held in this case that the giving of notice of permanent and total disability during the continuance of the policy was a condition precedent to waiver of premiums. Also, that the obligation to waive further payment of premiums and pay the sum then insured is dependent upon the performance of a condition precedent, namely, the surrender of the policy and the receipt at the home office of the Company during the continuance of the policy—meaning while the policy is then in force—of due proof of such permanent and total disability.

EDITOR'S COMMENT

The last referred to case may have been selected because it was tried in the lower court and in the Supreme Court by the Editor of the Journal. If members of the Association will promptly furnish to the Editor decisions or excerpts from decisions in their respective states which involve novel points of law on matters of interest to the insurance world, he will be glad to publish such of them from time to time as he is able to include in the Journal. Your Editor again requests the assistance of the membership in his efforts to give you a worthwhile Journal.

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Membership

Chairman: J. C. Cheney, of LaBerge, Cheney & Hutcheson, Miller Building, Yakima.

William Rush McKelvey, of Roberts & Skeel, Alaska Building, Seattle.

W. G. Graves, of Graves, Kizer & Graves, Old National Bank Building, Spokane.

WEST VIRGINIA

Legislative

Chairman: Thomas B. Jackson, of Brown, Jackson & Knight, Kanawha Valley Building, Charleston.

Frank C. Haymond, Fairmont.

E. A. Marshall, of Fitzpatrick, Brown & Davis, First Huntington National Bank Building, Huntington.

Membership

Chairman: Morgan V. Martin, of Martin & Seibert, The Peoples Trust Building, Martinsburg.

John C. Palmer, Jr., of Erskine, Palmer & Curl, Riley Law Building, Wheeling.

Robert E. McCabe, of McCabe & McCabe, Security Bank & Trust Building, Charleston.

WISCONSIN

Legislative

Chairman: James E. Coleman, 84 East Wisconsin Avenue, Milwaukee.

Gerald P. Hayes, First Wisconsin National Bank Building, Milwaukee.

Walter T. Bie, of North, Parker, Bie, Duquaine, Welsh & Trowbridge, Bellin Building, Green Bay.

Membership

Chairman: Glenn W. Stephens, of Stephens, Sletteland & Sutherland, First Central Building, Madison.

Harry L. Butler, of Olin & Butler, 1 West Main Street, Madison.

H. I. Weed, of Weed & Hollister, Wisconsin National Life Building, Oshkosh.

WYOMING

Legislative

Chairman: William C. Kinkead, of Kinkead & Pearson, Hynds Building, Cheyenne.

Harold I. Bacheller, of Durham & Bacheller, Consolidated Royalty Building, Casper.

M. A. Kline, 507 Majestic Building, Cheyenne.

Membership

Chairman: William C. Kinkead, of Kinkead & Pearson, Hynds Building, Cheyenne.

William B. Cobb, Consolidated Royalty Building, Casper.

M. A. Kline, 507 Majestic Building, Cheyenne.

By-Laws of the International Association of Insurance Counsel

ADOPTED AT AUGUST, 1934, MEETING OF THE ASSOCIATION AT FRENCH LICK, INDIANA

ARTICLE I

Name

This Association shall be known as International Association of Insurance Counsel.

ARTICLE II

Purpose

The purpose of this Association shall be—to bring into close contact by association and communication lawyers, barristers and solicitors who are residents of the United States of America, or any of its possessions, or of the Dominion of Canada, who are actively engaged wholly or in part in the practice of that branch of the law pertaining to the business of insurance in any of its branches, and to Insurance Companies; for the purpose of becoming more efficient in that particular branch of the legal profession, and to better protect and promote the interests of Insurance Companies authorized to do business in the United States or Dominion of Canada; to encourage cordial intercourse among such lawyers, barristers and solicitors, and between them and Insurance Companies generally.

ARTICLE III

Qualifications for Membership

Any person who is a member of the bar of the court of last resort of a State or Territory of the United States of America, or of a Province of the Dominion of Canada, and is actively engaged in the practice of law in the United States of America or in the Dominion of Canada, is of high professional standing, and who devotes a substantial portion of his professional work to the service of Insurance Companies, shall be eligible to membership in this Association, upon nomination in accordance with these by-laws.

ARTICLE IV

Nomination and Election of Members

Section 1. Nomination. Nominations for membership shall be made by a member of the Association. Every nomination for membership shall be submitted to the Secretary or to such other person as the Executive Committee may direct, in writing, in such form and shall contain such information as the Executive Committee from time to time by resolution shall require; shall be signed by the nominator or sponsor and by the nominee or applicant; and shall contain a certificate in writing signed by at least two members of the Association (other than the nominator) who are residents of the same State, Territory or Province as the applicant or nominee (except as hereinafter provided) certifying that the nominee or applicant is possessed of the qualifications for membership prescribed by these by-laws.

If there are not two members of this Association resident in the State, Territory or Province where the nominee resides, then certification as aforesaid shall be made by the member, if any, residing in said State, Territory or Province, and two other members of this Association.

Nominations made as aforesaid shall be submitted to the Secretary, or to such other person as the Executive Committee may direct, accompanied by the amount of the dues for the remainder of the current year as provided in these by-laws, which amount shall be refunded in the event the nominee is not elected to membership.

Sec. 2. Election to Membership. Nominations for membership made and certified as provided in these by-laws shall be submitted by the Secretary, or such other person as directed by the Executive Committee, to the Executive Committee, which is vested with full power to elect or reject applicants or nominees for membership.

Applications or nominations for membership may be submitted for action to the Executive Committee when in session or by mail to the members thereof. Two negative votes of members of Executive Committee shall prevent election to membership.

ARTICLE V

Dues

Sec. 1. Amount of Dues. Beginning January 1, 1935, each member shall pay to the Association Twelve Dollars ($12.00) dues for the period beginning January 1 of each year and ending the following December 31, payable January 1 of each year in advance, which sum shall include subscription of the member to the Association Journal, which is Two Dollars ($2.00) per year; provided that if more than one member of a law firm, or more than one person connected with the legal department of the home office of any Insurance Company, are members of this Association, then and in such case the annual dues for the members of such law firm or of such legal department shall be Twelve Dollars ($12.00) for one membership plus Three Dollars ($3.00) for each additional membership including, however, only one subscription to the Association Journal for all the members of such law firm or legal department who are members of this Association.

Sec. 2. Pro Rata Payment. A newly elected member shall pay in advance the dues prescribed in the foregoing Section pro rata for the balance of such calendar year in which he shall be elected, computed on a quarterly basis, beginning with the quarter of the calendar year in which the nominee or applicant shall be elected.

Sec. 3. Default In Payment. All members who shall be in default in the payment of dues for six months after the same shall become payable shall be

notified by the Treasurer that unless such dues be paid within thirty days thereafter such default will be reported to the Executive Committee, which Committee may upon such report, without further notice, cause the name of such member to be stricken from the roll of membership, and the membership and all rights in respect thereto shall thereupon cease.

ARTICLE VI

Officers and Terms of Office

Section 1. The officers of the Association shall be:
A President.
Three Vice Presidents.
A Secretary and a Treasurer—the same person may act as Secretary and Treasurer.

Sec. 2. No elective officer or member of the Executive Committee shall receive any salary or compensation from the Association for services rendered, except such compensation as may be fixed by the Executive Committee for the Secretary and Treasurer. Provided that nothing herein contained shall prevent the Association or Executive Committee from authorizing and paying the actual expenses, of any such person, incurred in behalf of the Association.

Sec. 3. The President, Vice Presidents, Secretary and Treasurer shall be nominated and elected, in the manner hereinafter provided, by the Association at its annual meeting for terms of one year beginning at the close of the annual meeting at which they shall have been elected, and ending at the close of the next succeeding annual meeting, and until their respective successors shall have been elected and qualified; Provided, however, that no person shall be nominated for or elected to the office of Secretary for the year beginning at the close of the annual meeting held in August, 1934, during which time the incumbent at the time of the adoption of these by-laws shall continue in the office of Secretary.

Sec. 4. No person shall be eligible to succeed himself as President after he has served two successive terms as President.

ARTICLE VII

Executive Committee

Section 1. How Constituted. There shall be an an Executive Committee which shall consist of the President, the last retiring President, the Vice Presidents, the Secretary and the Treasurer, all of whom shall be members ex officio, together with nine members, each of said nine members to be from a different state or province, to be nominated and elected by the Association in manner hereinafter provided and so staggered that three members shall be chosen each year to serve for terms of three years, in the following manner:

At the 1934 Annual Meeting of the Association there shall be nominated and elected five elective members of the Executive Committee as follows:

One to serve for one year.
One to serve for two years.
Three to serve for three years.

The terms of all to begin at the close of the 1934 and end respectively at the close of the 1935, 1936 and 1937 annual meetings of the Association.

Members of the Executive Committee previously elected for terms expiring respectively at the close of the 1935 and 1936 annual meetings of the Association shall continue in office until the expiration of their said terms. Thereafter three elective members of the Executive Committee shall be elected at each annual meeting of the Association for terms of three years beginning at the close of the annual meeting at which they shall have been elected and ending at the close of the third succeeding annual meeting of the Association.

Sec. 2. Quorum. Eight members of the committee shall constitute a quorum.

Sec. 3. The Executive Committee shall fix the times and places of the annual meeting of the Association, shall cooperate with the President in arranging annual meeting programs; is empowered to strike from the membership rolls any member who in its judgment has ceased to be eligible for membership under the provisions of these by-laws, subject to the right of any member so stricken from the rolls to appeal to the Association upon due notice to the members; may elect an Executive Secretary and such other clerks and employees as the Executive Committee in its discretion deems necessary to conduct the work of the Association, none of whom need be members of the Association, and fix the duties and compensation of such Executive Secretary and other clerks and employees; and shall have full power and authority, in the interval between meetings of the Association, to do all acts and perform all functions which the Association itself might do or perform, except that it shall have no power to amend these by-laws.

Sec. 4. The President, and in his absence, a Vice President (selected by the Executive Committee), shall be Chairman of the Executive Committee.

Sec. 5. Meetings. The Executive Committee shall meet immediately after the adjournment of the annual meeting—time and place to be fixed by the President, and at such other times and places as the President or a majority of its members may designate.

ARTICLE VIII

Nomination and Election of Officers

Section 1. Nominations. At the first session of each annual meeting of the Association the President shall appoint a nominating committee of five members of the Association which committee shall make and report to the Association nominations for the offices of President, three Vice Presidents, a Secretary, a Treasurer, and members of the Executive Committee to succeed those whose terms will expire at the close of the then annual meeting, and to fill vacancies then existing. Other nominations for the same offices may be made from the floor.

Sec. 2. Elections. All elections shall be by written ballot unless otherwise ordered by resolution duly adopted by the Association at the annual meeting at which the election is held.

ARTICLE IX

Vacancies

Section 1. A vacancy in the office of President shall be filled by a Vice President selected by the Executive Committee. Vacancies in the office of Secretary, Treasurer and elective members of the

Executive Committee shall be filled by the Executive Committee. A person selected by the Executive Committee to fill a vacancy in the office of President, Secretary or Treasurer shall serve only for the unexpired term. Members of the Executive Committee so selected shall serve until the next annual meeting of the Association, at which time vacancies in the Executive Committee shall be filled by the Association—members so selected by the Association to serve for the unexpired terms.

ARTICLE X

Duties of Officers

Section 1. The President shall preside at all meetings of the Association and of the Executive Committee. He shall, with the cooperation of the Executive Committee arrange a program for the annual meeting of the Association. He shall deliver an address at each annual meeting. He shall, with the assistance of the Secretary, present to each meeting of the Association and of the Executive Committee an agenda of the matters to come before such meeting. He shall perform such other duties and acts as usually pertain to his office and as may be prescribed by the Association and/or Executive Committee.

Sec. 2. Secretary. The Secretary shall be the custodian of all books, papers, documents, and other property (except money) of the Association. He shall keep a true record of the proceedings of the Association and Executive Committee, and do and perform all acts usually pertaining to his office and as may be prescribed by the Association and/or Eecutive Committee— all under the supervision and direction of the Executive Committee. He shall make reports of the Association's activities at every meeting of the Association and of the Executive Committee.

Sec. 3. Treasurer. The Treasurer shall perform the usual duties of a Treasurer in Associations of this kind, collect dues, keep accounts, and except for current expenses, shall disburse the moneys of the Association only upon direction of the Executive Committee of the Association, and shall make reports of the receipts and expenditures and financial condition of the Association at every meeting of the Association and of the Executive Committee. His accounts shall be audited annually by an auditor designated by the Executive Committee.

Sec. 4. Bond. The Treasurer shall give a bond in the sum of Five Thousand Dollars ($5,000.00) in such form as the Executive Committee may prescribe, with surety to be approved by the Executive Committee. Premium to be paid by the Association.

ARTICLE XI

Meetings

Section 1. The Association shall meet annually at such time and place as the Executive Committee may select.

Sec. 2. Special meetings may be called by the President or a majority of the members of the Executive Committee.

Sec. 3. Those present at any session of any meeting shall constitute a quorum, except for the purpose of changing the by-laws, for which purpose there shall be at least fifty members present to constitute a quorum.

ARTICLE XII

Committees

Section 1. The following committees shall be appointed annually by the President, each to consist of not more than five members, to serve for the year ensuing and until their respective successors shall be appointed.

On Health and Accident Insurance.
On Casualty Insurance.
On Fidelity and Surety Insurance.
On Fire and Marine Insurance.
On Life Insurance.
On Workmen's Compensation and Unemployment Insurance.
A Reception and Entertainment Committee.

In addition to the aforesaid Committees the President shall appoint such special committees as the Executive Committee may authorize, or as he, the President, may deem useful, to serve for one year ensuing and until their successors shall be appointed, and to perform such duties as the Executive Committee may prescribe.

Sec. 2. The duties of the first six standing committees above mentioned shall be to study the present status of Federal and State Laws, changes or proposed changes therein and court decisions pertaining to that branch of Insurance designated in the name of the Committee, report the same to the Association, and when occasion requires, recommend such action by the Association as may be deemed proper.

Sec. 3. The duties of the Reception and Entertainment Committee shall be to introduce members to each other, assist members in becoming acquainted, and provide entertainment at the annual meetings.

ARTICLE XIII

The International Association of Insurance Counsel Journal

The Association shall publish, quarterly or at such times as may be fixed by the Executive Committee, a Journal. This publication shall be under the direction of the Executive Committee, which is authorized to appoint a sub-committee or Board of Editors to manage and conduct such Journal.

ARTICLE XIV

Complimentary Resolutions

No resolution complimentary to an officer or member for any services performed, paper read, or address delivered shall be considered by the Association.

ARTICLE XV

Amendments

These By-Laws may be amended or rescinded at any annual meeting of the Association by an affirmative vote of at least two-thirds of the members present at any session of such annual meeting provided there be not less than fifty members present at such session and provided, further, that notice of the proposed amendment or change be given by the Secretary to the members of the Association either by mail or publication in the Association Journal at least thirty days before the meeting at which such action is proposed.